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LAND REFORM AND FARM REORGANIZATION IN TAJIKISTAN

POLICY ISSUES PAPER

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ACRONYMS AND ABBREVIATIONS

AAH	Action Against Hunger
FAO	Food and Agricultural Organization
FSU	Former Soviet Union
GBAO	Gorno Badakhshan
GOT	Government of Tajikistan
NGO	Non-governmental Organization
USAID	United States Agency for International Development

INTRODUCTION

This policy paper grew out of a legal assessment of the land and farm reorganization legislation in the Republic of Tajikistan, commissioned by the United States Agency for International Development (USAID) and the ARD/CHECCHI Commercial Law Project. That assessment included the review of all legislation related to land reform and farm reorganization and focused on specific legal impediments to reforming land tenure relations. In so doing, it raised a number of broader policy issues. This paper is an attempt to (1) establish priority policy issues and their law reform and implementation implications, based on the experience of people who have been involved in on-the-ground efforts related to land reform and farm reorganization, and (2) identify areas where USAID projects can work with the Government of Tajikistan (GOT) to address these priority issues.

The outline of priority issues was developed in conjunction with the project COP and local Tajik lawyers. In addition, a workshop was held at which other members of the non-governmental organization (NGO) and donor community attended, as well as policy-makers in the Tajik Government. The purpose of the workshop was to try to come to some consensus on the key issues and to prioritize these issues. Following the workshop, the Tajik Government Land Committee published a Concept Paper that describes the GOT priority issues for land reform and related legislative changes. This policy paper incorporates those ideas and seeks to develop them further.

I.0 CURRENT POLICIES AND NEED FOR LEGISLATIVE REFORM

All the fundamental issues facing Tajikistan in its efforts to provide long-term land use rights to private citizens and to restructure agricultural enterprises are known to the Government of Tajikistan and to the international community working in Tajikistan on agricultural issues.

These issues can be divided into two broad categories:

1. Issues related to individual rights to land including:
 - Land tenure security as an incentive to agricultural investment;
 - Access to land as a safety net for rural residents; and
 - Access to land rights by women and other disadvantaged groups;
2. Issues related to an efficiency-enhancing market in land rights, including:
 - Use of land rights as security for loans for agricultural development;
 - A system of recordation and proof of rights in land and transactions in such rights; and
 - A modern, integrated land administration system.

The issues listed under number one above must be resolved before the issues listed under number two can be meaningfully broached, and this paper will focus on issues related to individual rights to land.

In Tajikistan, and other countries in the former Soviet Union (FSU), privatization of land means that state and collective farmland is distributed to individuals. Individuals, then, have the right to withdraw from the state or collective farm to establish private farms. Both the right to a share of land and the right to withdraw that share of land and establish independent and private farms must exist for that right to be meaningfully exercised.

To summarize, the major problems affecting individual rights to land in order of priority are:

1. If a member of a farm wants to withdraw his land and farm independently, he must take-on a portion of the debt accrued by the former state or collective farm, and this debt is often hundreds of dollars per hectare (especially in areas where cotton is grown).
2. While farmers have the theoretical right to establish family dehkahn farms by withdrawing from a former state or collective farm with long-term use rights to land and some non-land property, the process is inequitable; not transparent in terms of determining location, quality, and size of the land plot assigned; and made expensive through the imposition of informal costs.
3. To withdraw from a farm, approval of the farm chairman, the district hukumat (head official), and the local Land Committee is required, yet they have no motivation to convert the collective farming system to individual farming as this would restrict their rent-seeking behavior.
4. Even if a farmer withdraws his land to farm independently, he does not always have the real right to choose what he plants. Quotas still exist, and cotton farmers are pressured into contracts with cotton futures companies and cotton ginneries that are unfavorable to them and that continue to pull them

further into debt. Local government is an informal party in these arrangements, making it more difficult for farmers to act independently

5. Whole farm reorganizations occur without the knowledge or understanding of the members, and farms are reorganized only in name (changed to a cooperative or joint stock company for example) but with no other changes to management or operations.
6. There is a serious lack of information for farmers about options for land use right ownership and private farming.
7. While a small number of farmers have title to long-term use rights, and can make independent decisions about their land use, their tenure is not secure. The government holds the power to withdraw land without a court decision and without any clear guidelines on when this right can be invoked.

The most serious and complicated problem affecting land reform efforts in Tajikistan is the large amount of burdensome private debt of the cotton farms and the country's economic dependence or perceived dependence on large cotton farms.

Much of the risk under future contracts has been shifted to cotton producers because prices for inputs and cotton are not specified in the agreements. The debt carried by the cotton farms is the biggest impediment to privatization and restructuring of these farms. These debts began accumulating during 1996 and 1997, when the kolkhozes/sovkhozes took inputs on credit but were unable to repay their loans because of poor harvests and the low price of cotton. In addition, the political instability of the civil war period was a factor because workers fled, machinery was stolen, and crops were destroyed. As kolkhozes/sovkhozes have been restructured into dehkahn farms, their debts have been transferred to the new farms according to their size in hectares.

Payment of these debts can be difficult. The debts are owed to local investors (also known as futures companies). These companies make an agreement with farms at the beginning of the year to provide each hectare with a certain amount of seeds, fuel, fertilizer, machinery, spare parts, and money for salaries and taxes. In return, the farms agree to give the investors a certain amount of cotton (the amount allocated to them by the government plan) at the end of the year. If the farms produce more than their plan, they make some profit, which goes towards paying off their debts. If they produce less, the debts increase.

The local investors work closely with the district and oblast hukumats and have a monopoly in certain districts. Because of their monopoly on credit and because farms must keep working with them until they pay back their debts, these local investors are able to engage in a number of illegal practices to maximize their profits.

Moreover, typically in cotton farming districts, both dehkahn farms and kolkhozes/sovkhozes are required by the government to grow 70-90% of their land in cotton. Each district hukumat is given a production target (in tons) from the oblast hukumat. It then distributes this plan among its dehkahn farms and kolkhozes/sovkhozes, according to a district-wide rate. (AAH)

The result of these untenable policies in cotton growing regions has been slave wages for cotton workers, no real rights to land, and out-migration of labor from the cotton growing areas.

Cotton farmers want a right to their land and want the right to choose what to farm on this land. However, given that they would have to pay both the official and unofficial cost of privatizing valuable land, they would have to take on and satisfy the debt of the farm, and they do not have an option to be released from their cycle of inputs and payments with the future companies, few farmers are interested in becoming "private" farmers. It does not make economic sense to them.

The cotton farms that have been "privatized" have become collective dehkahn farms with little to no change in farm management structure. In some cases, even though farm workers have a right to "own" their own land, they prefer to pay to lease their land from the cotton farm to avoid taking on farm debt and to avoid the high taxes owed on privately held land. The numerous types of taxes are punitive for small private farms. They are subject to 12 types of national taxes and several local taxes.

A study done by the Action Against Hunger Project (AAH) found that in the five districts where they work (cotton growing districts) respondents stated that, in over 90 percent of the households, they were free to choose what crops to grow on household plots and presidential land. Those who said they are not free live in malaria-prone areas where they are not allowed to grow rice because rice fields are breeding grounds for mosquitoes. For rented land, half of households were free to choose, while the other half were subject to certain production requirements as part of their condition of tenure. For dehkahn farms, none were free to choose what to grow.

TABLE I. FREEDOM OF CHOICE BY LAND TYPE (AAH)

LAND TYPE	FREEDOM OF CHOICE
Household Plots	989/993 (99.6%)
Presidential Land	635/700 (90.7%)
Rented Land	34/68 (50.0%)
Dehkahn Farms	0/35 (0.0%)

Cotton growers still face strictly enforced quotas on cotton production from the local authorities whose spending is directly connected with cotton revenues. According to these quotas dehkahn farmers are forced to cultivate cotton on at least 70% of their land and then have no choice but to sell the cotton to state-owned intermediaries, who in some cases have failed to pay dehkahn farmers for the last three years (Penrose, 2003).

By contrast, in Gorno Badakhshan (GBAO), most land has been divided according to the land reform legislation and farmers are working individually or in small groups. The general feeling is that the land was divided fairly. The Aga Kahn Foundation was instrumental in overseeing and providing support to the land reform process. It is also important to note that Badakhshan is extremely mountainous, with low agricultural potential and no pressure for cotton growing. Thus, many of the interests and pressures that exist in the cotton growing regions are absent in GBAO.

Resolution of the debt issue has become a primary concern of the GOT, and it is engaged in high level discussions with international donors and NGOs to determine a solution that is economically and politically feasible. USAID's continued involvement in these discussions is critical, as is the need for all the major international players in Tajikistan to speak with one voice. It is simply not feasible for individual farmers to be burdened with debt that was in fact incurred by the collective entity.

Even without resolution of the debt issue, there are policy decisions and legislative changes that can marginally move the land reform forward and provide a more transparent and equitable process of reform, although meaningful widespread reform, especially on cotton producing farms, will not be possible.

These changes relate to issues 2 through 7 above and will be discussed in more detail below.

2.0 POLICY, LEGAL, AND IMPLEMENTATION ISSUES FOR PROMOTION OF EFFECTIVE FARM-RESTRUCTURING AND LAND REFORM (IN ORDER OF PRIORITY)

The process of land reform must begin with secure private rights to land. Without a private right to use land, there can be no land market or ability to use land as an economic asset. As in other former Soviet Union countries, rural land reform must start with the distribution of land (or land use rights) to members of the former state and collective farms and must give new land right users the real right to decide in what type of farm organization (if any) they want to farm. There are several models for this redistribution of land and restructuring of farms. In Russia, Moldova, and Ukraine, for example, rights to land were distributed to individuals or households, and, once receiving this right, these individuals or households decided whether or not they wanted to withdraw from their former farm and farm independently or with other private farmers. In many cases, the large collective farms did not restructure in any real sense.

On the other hand, in Kyrgyzstan, at the same time land use rights were distributed to individual households, whole farms were restructured, and the former collective no longer existed. Most farms initially restructured into brigades. Many later restructured into individual family farms. This simultaneous land distribution and whole farm restructuring limited corruption to some extent because the process was transparent and did not require an individual procedure of withdrawal from the farm.

In Tajikistan, farms are being restructured in a meaningless way, with land use rights not being distributed to individual farmers at the time of the restructuring. Individuals who want to receive their right to land must petition the hukumat as individuals. One government official from the State Land Committee noted that the only way to stem local corruption in the land reform process is to simultaneously distribute land certificates to all individuals who are members of the farm and break-up the collective farm into smaller units.

The first priority for changes to land reform legislation in Tajikistan is to design a transparent and equitable system for farm reorganization and distribution of private land use rights. The Government Concept paper specifically calls for amending the main piece of legislation dealing with these issues, the “Regulation on Agricultural Enterprise Reorganization” and additionally calls for preparing a regulation on distribution of non-land property.

2.1. FARM RESTRUCTURING

Farm restructuring legislation is the highest priority because the goal of the government is to finish the restructuring of farms by December 31, 2005. Currently the farm restructuring process is ongoing and is based on Regulations promulgated under Presidential Decree, “On Procedures for Reorganizing Agricultural Enterprises and Organizations,” #522, June 25, 1996. These regulations lack sufficient detail and do not provide for an open and transparent process of farm reorganization. International donors that have been monitoring the situation state that farmers generally have no notice of farm reorganization, no information about the process, no information about the choices they have to make, and no input into the farm

reorganization process. Currently the law requires very limited notice of the impending farm reorganization and limited detail as to the process required for reorganization.

International evidence is strong that private farm enterprises achieve greater total factor productivity (the value of output achieved for every somoli of input including land, material inputs, and labor) than collective or state farms. The goal of farm restructuring in Tajikistan is to create smaller, more efficient farms based on the labor of their members. This requires a new management structure that allows for input of all members of the farm. The legislation controlling farm reorganization should allow farmers to freely choose what form of farming they want to engage in, and, at the same time, ensure that all forms of farming are treated equally, without special privileges being extended by GOT to larger farming entities. Moreover, the legislation should require that the process of farm reorganization is transparent and equitable.

The Government of Tajikistan has prioritized the following issues in relation to farm reorganization:

- Develop regulations for distribution of land and non-land property to individual families;
- Create conditions for individual family farms by encouraging marketing and service cooperatives and cooperative management of non-farm property; and
- Stop local government interference with farm reorganization.

2.2. DISTRIBUTION OF LAND USE RIGHTS

Distribution of real, valuable, and exercisable land use rights to private individuals is a key component of any land reform that seeks to deconstruct inefficient collective farm entities. While farm reorganization has been emphasized in Tajikistan, distribution of land rights to individuals has been done primarily on an ad hoc basis. According to the Food and Agricultural Organization (FAO) monitoring project, only 7,248 land certificates have been issued under the current farm restructuring process. In the first quarter of 2004, only 5,665 sub-certificates (to individual families) were issued.

Furthermore, registration of transactions and other changes occurring on presidential and household land, which provide the most food security for individual households, have not been maintained, making the land use right insecure. The Government Concept paper recognizes this as a key issue.

The current right to agricultural farm land is not for a specific parcel of land or for a specific period of time (inheritable use right) and requires receiving permission from the local hukumat to partition land and withdraw from the farm. If land is to be equitably distributed in long-term use rights to individuals or households, there must be an automatic, unequivocal right to this land for former members of collective and state farms. The legislation should require that former collective and state farms be divided equally among the members of the farm and that all members of a farm should receive land share certificates indicating their right to a portion of land. If land is distributed to a group of households in joint use rights, all members of the farm should be listed on the certificate. Under the current law, this is not required.

In Action Against Hunger's in-depth survey of farmers, they found that people could freely use their household land and presidential land without interference from the government. These lands provided the greatest food security. One issue that needs to be decided is whether household land plots should be enlarged while at the same time keeping enough land in joint production for the continued production of cotton. Enlarging household land plots (without assigning debt to this land) and allowing households to freely choose how to use this land may be an intermediate step that would improve the economic situation of households in cotton regions while the issue of debt is being resolved.

The Government Concept paper states that personal holdings are understated, that djamoats are not properly monitoring use of personal holdings and should exert more control over their use, and that citizens who have holdings above the legal amount should have a portion of their land redistributed to those without land. These issues should be discussed further in light of the fact that individual holdings have been relatively free from state intervention and therefore have been productive and have allowed people to raise their own food.

Any new GOT interference, especially withdrawing land from individuals, can create insecure tenure on these personal holding plots. Decreasing tenure security is certain to reduce investment in and productivity of these important land resources.

2.3. DISTRIBUTION OF NON-LAND PROPERTY RIGHTS

In the former Soviet Union and much of Eastern Europe, the distribution of property from the state or collective farms has been extremely difficult and in most cases corrupt. Non-land property consists of farm machinery, livestock, livestock sheds, and other types of immovable property. Dividing up this property was difficult, and in many cases the property was retained by the former state or collective farm and allowed to deteriorate. In other cases it was sold to recover debt or to enrich the former farm bosses.

The GOT Concept Paper states that in Tajikistan, non-land property was in many cases appropriated by farm managers or sold at auction. There has been no monitoring of the process of property distribution. The rules for property distribution are provided in the Regulation on Reorganization of Agricultural Enterprises, but these regulations lack specificity and transparency. The GOT has appropriately prioritized a re-drafting of these regulations.

2.4. SECURE TENURE AND THE ROLE OF THE STATE

In Tajikistan, the GOT retains the right of land ownership and has broad right to withdraw land used by private owners. The provisions regarding this right to withdraw are vague, over-broad, and include inappropriate rights of withdrawal for private, non-public interests.

Rights to land can be terminated without compensation for many reasons, including irrational use, non-use for agricultural production for one year, use for non-agricultural purposes for two years (Art. 37(h)), or for regular violation of the land legislation (Art. 37). A decision on termination of land rights is made by the local executive body upon recommendation by the Land Committee (Art. 39). The procedure for sanction of a violation involves a penalty first and also a warning on how to eliminate the violation. If the violation is not rectified, the Land Committee may propose that the land right be terminated (Art. 40). No time frame is provided for this decision, nor is there a process for appealing the initial violation or decision to withdraw. No specific proof is required.

This broad right to withdraw land from private land users will decrease land tenure security and will correspondingly discourage people from investing in the land. Both the procedure and the purposes for withdrawal should be specified clearly and in detail by regulations related to land withdrawal. The reasons for withdrawal should be limited to those that serve to protect or promote legitimate state interests and should not be extended to inappropriate command and control objectives. It should be noted that GOT sees this right to withdraw land as one of the main benefits of not fully privatizing land and wants to retain this right.

Under the Land Code, land can be withdrawn by the State for a public purpose or for private non-agricultural needs, with compensation. Natural persons or legal persons that want a land plot for purposes of construction apply to the local authorities. The local authorities and the Land Committee make a decision, and at that point they can withdraw the land if they provide compensation for losses (Art. 31). Public purpose is not defined and there is no procedure for deciding which land will be taken and for what purpose.

Under the law, if land is taken from a natural person for a public purpose, an equivalent land plot must be assigned to that person; housing or other buildings must be re-built, in addition to full compensation for all losses, including lost profit. If land is taken for a public purpose from a legal person, the housing or other construction must be re-built, and all other losses, including loss of profit must be fully reimbursed. State and public needs are not further defined. It is unclear how full compensation is determined and there is no process for involving the land right user (Art. 48).

The doctrine of compulsory acquisition reflects the rationale that the public's interest in land may be paramount to the interests of individual land users. Every nation has retained the power of eminent domain -- the right to acquire a specific piece of land from its holder, whether an owner or use right holder (use rights are common in transitional countries) for a public purpose. As a check against this extraordinary power, however, most nations have also developed a set of guidelines governing the purposes for which land can be acquired, the level of compensation that must be paid to the owner/user or owners/users of the land (or to other substantial right holders), and the procedures that must be followed to acquire the land. These guidelines vary according to each country's balancing of private and public interests in land, but their presence is essential to the functioning of land markets. Compulsory acquisition rules or practices that do not adequately protect individual land rights decrease tenure security, depress land values, and reduce the acceptability of land as collateral.

2.5. LAND MARKET TRANSACTIONS AND MORTGAGE

As stated above, before a land market can exist, there must be private rights to land. The conditions for a land market in Tajikistan are very poor, because few agricultural workers have private use rights to land. There is virtually no formal land market in Tajikistan. There are contradictory provisions in the legislation related to the theoretical right to sell a land use right, and no provisions for valuation of land or implementation of this right to sell. Mortgage of a land use right is allowed, but without the right to sell the land use right to recover the debt, agricultural land cannot be used as collateral in practice.

However, it is important to note that land privatization (or land use right privatization) and individualization may not induce much transfer and recombination of landholding. As in the Kyrgyz Republic, private rental and sale markets will be constrained by the scarcity of agricultural land and the importance of agriculture for social and food security, given the lack of alternative employment/income opportunities for less efficient farmers. From the standpoint of rapid agricultural growth this situation is "inefficient," as high productivity farmers are less likely to rent in and lower productivity farmers are less likely to rent out, preventing productivity-enhancing transfers. From a social welfare perspective, on the other hand, the situation *is* "efficient" because the rural sector has absorbed so much displaced labor and provided some level of food security. A stronger "pull" from off-farm employment and improved profitability of crops will likely be needed to induce efficiency-enhancing transfers.

As to the legislation regarding purchase and sale of land use rights, the current right to purchase and sell the use right to land is not specifically permitted by law. Article 70 of the Land Code provides that dehkahn farms have the right to "transfer" land. However, as this provision is understood by the GOT, it does not include transfer for payment because there are no specific regulations related to purchase and sale and no regulations regarding valuation.

Before land can be formally sold, the GOT may want to address a number of broader policy issues related to the environment and equity. Every country in the former Soviet Union and most of Eastern Europe placed some restrictions on the right to sell land in the initial phase of opening up a land market. Over time, many of these restrictions were lifted, especially in Eastern Europe. For example, most early land laws made it very difficult to change the use of land from agricultural production to non-agricultural production so that the more wealthy urbanites would not buy the best agricultural land for factories or other non-land based enterprises. In some countries, land could not be sold to legal entities or to foreign citizens. The GOT may want to protect landholders in the early stages of the land market, but must at the same time recognize that such protections will suppress the price of land. Once the populace is educated as to the value of land and the rights associated with land, these restrictions often no longer serve a necessary function and are lifted.

SUMMARY OF PRIORITIZED POLICY AND LEGAL ISSUES

1. Amend Presidential Decree, "On Procedures for Reorganizing Agricultural Enterprises and Organizations," #522, June 25, 1996 to provide for a transparent process of farm reorganization and distribution of land.	<ul style="list-style-type: none"> • Provide for specific requirements related to more notice, process, and distribution of information associated with farm reorganization. • Establish transparency in terms of location, quality, size of the land plot assigned, and cost of withdrawal. • Provide guidelines as to who will be on the farm commission and ensure that the commission make-up will encourage transparency. • The land committee is responsible both for distribution of land and hearing disputes about this distribution. Separate these two functions. • Provide clear guidelines for determining how much land will be in the land fund.
2. Strengthen the regulations for distribution of land use right certificates to all households who have a right to agricultural land	<ul style="list-style-type: none"> • Eliminate the requirement for approval from the district hukumat to withdraw land from a farm. • Require all land within collective and state farms be <i>divided equally</i> among all those who are eligible and allocated as land shares. • Eliminate the requirement that farmers wishing to leave the collective and state farms pay off a portion of the debt that ought to be the responsibility of the original debtor—the collective and state farms. • Distribute land shares <i>free of charge</i> to farm workers, pensioners, invalids, and specified social sphere workers. • Distribute land share certificates, listing the names of each recipient's family members and providing a share for each family member. Require registration of land share certificates (as per Art. 9 of the Regulation on Procedure and Issuance of Certificates of Land Use Right and Entitlement to a Land Share, No. 389, September 4, 1999).
3. Develop a regulation for distribution of non-land property	<ul style="list-style-type: none"> • Provide that the farm commission described above will distribute both land and property. (Currently, the farm commission distributes non-land property; the raion land committee distributes land.) Create and open and transparent procedure. • Eliminate the distinction between state and collective farms in terms of property distribution. State farms must sell their non-land property to the members of the farm, while collective farms distribute the non-land property for free. • Currently, the major assets of the farm (social establishments, and inter-farm systems) are transferred to government bodies and are not privatized at the time of farm privatization. Review these provisions and amend.
3. Amend the legislation to reduce the power of the GOT to withdraw land.	<ul style="list-style-type: none"> • Require a court decision for withdrawal of land. • Provide clear guidelines on when the right of withdrawal can be invoked. • Do not allow State withdrawal of land for private use.
4. Allow land use rights to be sold.	<ul style="list-style-type: none"> • Develop regulations on purchase and sale of land. • Develop provisions for valuation of land.

3.0 IMPLEMENTING POLICY CHANGE: INSTITUTIONS AND PROCESS FOR REVISION OF LAND LEGISLATION

The main government actor in revising the land legislation is the State Land Committee. The Land Committee's Concept Paper indicates their willingness and desire to work on the legislation governing the reorganization of farms and other legislation. While the Land Committee can initiate draft legislation, the other Ministries must comment on the legislation before it is presented to Parliament.

I would recommend the following process for revision of land legislation:

1. **Establish a working group.** Sort-out with the other international donors and NGOs what has already been done in terms of establishing a working group to address land legislation. Identify who needs to participate in the working group both in terms of expertise and in terms of political process. The working group should be inclusive, although the actual drafting should be done by several skilled local lawyers with technical assistance from international organizations.
2. **Consider requesting a legislative document establishing the working group to work on a specific set of laws.** If a Presidential Decree or Government Resolution can be passed establishing a working group and identifying key actors that must participate, the working group will have more authority and appeal. The chair of the working group should be the chair of the Land Committee, and the decree or resolution should identify other ministries and agencies that will be involved.
3. **Divide the working group into smaller drafting groups and assign one piece of legislation to each group.** The smaller groups should be drafting groups, and include people with specific expertise. Clear guidelines and timelines should be set.
4. **Hold regular meetings (bi-weekly) of the larger working group to review and comment on the drafts coming from the smaller drafting groups.** Discuss specific sections of the draft laws in the larger group, and then re-send the legislation to the drafting group for changes.
5. **International experts provide examples of how similar problems were solved in other countries.** One of the most effective tools for working with unsettled policy issues in Kyrgyzstan was to provide to policymakers examples of solutions or compromises reached by other countries facing similar issues. Since most of the FSU and Eastern Europe have faced comparable difficulties, there is now a body of tested legislation from which to draw.
6. **Once the first drafts are complete, hold workshops to present the legislative drafts and receive feedback from local governments, farmers, and other participants in the reorganization.** The workshops should be held in the region with local government and farmers

(especially local leaders in the farming community). At least one workshop should be held in each region of the country at this stage.

7. **Refine the drafts based on these workshops in the legislative drafting groups.**
8. **Final approval of the drafts from the larger working group.**
9. **Publish the working drafts in local newspapers and request comment within one month.**
10. **Agree with the Land Committee to submit the draft legislation for consideration by the President or Parliament.** Consider the sequencing of submitting the legislation to the President or Parliament.

ANNEX I. SUGGESTIONS FOR PRIORITY LEGISLATIVE CHANGES

Regulation No. 522, June 25, 1996

Notice and Process. To make the process more transparent and open, the following requirements might be added to the regulations:

- At least 60 days notice to all farm members that the farm will be reorganized.
- Publish the notice in the newspaper, post it in common areas, and distribute it to all members of the farm enterprise.
- Thirty days before the general meeting in which the reorganization will begin, an informational general meeting will be held. Provide information about the process of the reorganization, state what assets will be distributed and how, and answer any questions of the farm members.
- At the first general meeting, the assembly will elect 3-5 members of the farm to represent the interest of the members and 2-3 representatives of local NGOs to a farm commission, which would also include the *hkukumat*, the farm chairman, and the land committee specialist.
- The farm commission will be responsible for dividing both non-land property and land.
- Disputes will be heard by the farm commission and a member of the central office of the land committee.

Equitable Distribution. To encourage equitable distribution of land and property, the following provisions might be added to the regulations:

- Guidelines for the rayon land committee on how much land and what type of land should be held in the land fund.
- The remaining land will be divided equally among all members of the farm.
- Land share certificates will be distributed to each member or household with all household members listed on the certificate.
- The amount of land received shall be stated in the land share certificate.
- The same criteria will be applied to land distribution as is applied to property distribution in Article 12.
- A detailed procedure for the equitable distribution of non-land property including how the property will be valued and how the “lumpy” assets will be divided.
- A provision stating that state and collective farm property will be distributed free of charge to the members of the former farm.

The Law on Land Reform No. 594, March 5, 1992, as amended by No. 1005 and 134 July 21, 1994, November 4, 1995, May 5, 1997:

- Repeal Article 18, which states that individuals or enterprises who want land from the farm must petition the hukumat.
- Repeal Article 13 and Article 18, which allow for automatic distribution of land shares to enterprises only.

Resolution of Tajik Government, “On Simplified Procedure for Determination of Land Share and Registration, No. 30, February 4, 1999

- Repeal the provision that states that the local hukumat must approve withdrawal of land from a state or collective farm.

Regulation on Procedure and Issuance of Certificates of Land Use Right and Entitlement to a Land Share, No. 389, September 4, 1999

- Repeal. Certificates should not be issued to enterprise heads without listing the names of all members on the land certificate as this effectively eliminates the individual right to land of its members.

Land Code of the Republic of Tajikistan, December 13, 1996 as amended by No. 498, December 12, 1997; No. 746, May 14, 1999, No. 15, May 12, 2001, and No. 23, February 28, 2004.

- Add to the Land Code that land shares from former collective and state farms will be distributed to members of the farm for a term of 99 years.

ANNEX 2. PRIORITY ISSUES AND NEXT STEPS FOR USAID PROJECTS AND THE GOVERNMENT OF TAJIKISTAN

1. **Cotton Debt.** The highest priority issue for all donors involved in land reform is consensus on how to deal with farmer debt. USAID should be actively involved in these discussions and where possible should provide specific suggestions for how to proceed based on an understanding of all the issues involved.
 - a. USAID should conduct independent research on the legal aspects of the debt issue. The ADB conducted research and reported on Tajik's cotton debt at length. In addition to reading material that has already been written, team members who are involved in the policy discussions should request that local lawyers in the Land Reform Project identify legal issues and possible solutions. For example, a review of the contracts between future companies and farmers would be necessary as well as a review of the contracting law.
2. **Legal Drafting.** The Tajik lawyer working for the CAR project and the lawyers hired under the new Tajik Land Reform Project should meet with the FAO and move forward on establishing a legal drafting working group. Steps described above under section three should be followed.
3. **Land Rights Literacy.** In a recent Action Against Hunger Study, only 7.8% of interviewed households knew how to apply for a dehkahn farm and many did not know what a dehkahn farm was. When asked to rate their knowledge of the land laws of Tajikistan on a scale of 1 to 5, 85.1 percent of households responded with "1 – no knowledge."

Community-based sustainable and replicable land literacy must be mainstreamed into society. Local leaders, farmers, judges, and land professionals must all understand the law and its implications and how to use and follow the law. The rule of law is more likely to have value if there are many people who understand land law and use and protect their rights under the law.

It is clear; however, given the myriad of difficulties in establishing a private, individual farm, that information alone will not be enough. Farm members will need consistent and knowledgeable assistance to withdraw their land and to farm independently. There are few such services available and no nationwide programs to educate and assist farmers on their legal rights.

Rights exist only to the extent that they are meaningfully asserted. The tight knot woven by years of command economy relationships will be impossible to untie without constant monitoring and assistance to farmers in the form of community organization and empowerment. Without representation (which I

define as constantly available, objective, professional and actively engaged), farmers will find it difficult to apply the knowledge they are given about their land rights.

4. **Strengthen Farmer's Groups.** Raion level farmer's associations will be essential for dissemination of legal information to farmers; informal dispute resolution; organizing and providing feedback on the legislative process; and providing new farmers with assistance. For land reform to work in Tajikistan there must be some organization of farmers at the grassroots level. Many farm laborers are women who are not empowered and not informed.

The Associations of Dehkahn Farms, present in most areas, are often actively engaged in assisting farmers who want to farm independently. Unfortunately this group is weakened by their lack of financial support. Most members volunteer to assist other farmers because of their commitment to private farming.

Land reform in Tajikistan will not improve with legislative changes alone. In fact, the legislation that exists is not cited by farmers as a factor in their decision-making at all. Farmers need to be able to negotiate with officials, and the communities need to agree to change if change will occur.

Major legal changes will not be effective without a sustained effort to implement the change and to sensitize and gain some agreement about the change. While workshops, training material, and mass media campaigns are able to alert the public to a change, they do little toward affecting a change in attitude or action unless they are augmented by the efforts of local people who both understand and support the legal change. Land literacy requires a level of understanding and acceptance that goes beyond a simple knowledge of what the written law says.

ANNEX 3: TRAINING TOPICS ON LAND POLICY AND LEGISLATION

1. Individual Rights to Land and State Rights to Land
2. Role of Government in Land Relations
3. Contracting in the Marketplace
4. Land Tenure Security
5. Legal Basis for Land Reform
6. Communal Land
7. Household Land and Presidential Land Rights
8. Right to Transact in Land Market
9. Land Lease
10. Farm Reorganization
11. Right to Use Land and Other Assets as Collateral
12. Introduction to Mortgage and Pledge
13. Intra-Household Land Issues
14. Registration
15. Termination of Rights to a Land Plot
16. Eminent Domain Issues
17. Types of Liability and Some Legal Protection for Land User Rights
18. Remedies for Resolving Land Disputes
19. Agricultural Business Entities
20. Dehkahn Farm Enterprises
21. Taxation

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